



MATTHEW L. SCHWARTZ  
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March 2, 2018

**BY ECF**

Hon. Ronnie Abrams  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re: *United States v. Jason Galanis, et al.*, S1 16 Cr. 371 (RA)**

Dear Judge Abrams:

I represent Devon Archer. I write in response to the Court's February 28, 2018 Order [ECF No. 323], to notify the Court of the following material changes to the facts underlying the parties' pending motions.

1. As set forth in Mr. Archer's letters dated February 20 & 27, 2018, the government's recent conduct has made Mr. Archer's argument for severance, which was already compelling, even stronger. As the Court is aware, those letters were filed under seal.

2. Since the defendants filed their motions, the government has made 13 additional productions, totaling approximately 24,394 pages of new material, as well as critical metadata that has affected and required a re-review of certain of the government's prior productions. *See* Ex. A (cover letters for discovery produced on January 25, 26 & 30 and February 8, 9, 12, 15, 16, 20, 22 & 27, 2018). As set forth in Mr. Archer's motions, the volume and timing of discovery is relevant to a variety of issues, including the need for a bill of particulars.

3. On February 8, 2018, the government produced to Mr. Archer a new set of material, comprising approximately 350 pages, from the government's "taint team." This was the third set of materials the "taint team" has sent to Mr. Archer, suggesting that its review is still ongoing – notwithstanding the government's commitment not to review additional material without a new warrant – which makes it all the more important for Mr. Archer, and the Court, to inquire into how that review is being conducted, as explained in Mr. Archer's suppression motion.

4. On February 12 and 15, 2018, the government produced spreadsheets identifying records obtained from the SEC that it has produced in discovery. Contrary to the government's suggestion, this spreadsheet, at best, may aid Mr. Archer in avoiding duplication of effort in reviewing discovery produced by the SEC, but it does not alleviate the impact of the volume of discovery in this case or mitigate the need for a bill of particulars. Among other things, these



spreadsheets do not cure the problem of the government producing tremendous volumes of information that, by its own admission, do not constitute Rule 16 evidence and are utterly irrelevant to this case, such as the undifferentiated contents of entire forensic images of certain drives and devices.

5. On February 22, 2018, the government informed defendants that, because it intends to rely on hearsay statements made by Jason Galanis for the truth of the matter asserted, it would make certain materials available for review at its office, including an estimated 12,800 calls recorded by Jason Galanis as well as an unknown number of text messages. Because the wiretap was consensual, there are no line sheets or transcripts to guide the review. Mr. Archer first requested access to these materials no later than June 2016, and his counsel has been granted this limited access just two months before trial, when they are utterly unable to conduct a complete review of this critical *Brady* material in time to make effective use of it at trial. Moreover, while making this material available to the defense moots one aspect of Mr. Archer's motion to compel, the government did not indicate what other materials it would provide in order to comply with its obligation to produce *Brady* material relating to Jason Galanis.

6. Also on February 22, 2018, the government provided notice that it intends to introduce unidentified evidence on several matters, including (1) "[e]vidence that defendants Gary Hirst, Jason Galanis, and John Galanis were arrested in a separate case (the 'Gerova Case' on or about September 24 and 25, 2015, and were subsequently convicted of securities fraud, wire fraud, and/or investment advisor fraud in the Gerova Case"; (2) "[e]vidence that the SEC had previously barred both Jason Galanis and John Moran from holding certain positions in the securities industry"; and (3) "[e]vidence relating to the buying and selling of shares of Code Rebel (defined as the 'Technology Company' in the criminal complaint in this case) following Code Rebel's May 2015 initial public offering." Aside from the above-quoted language, the government did not disclose any additional information or evidence about these three areas, but these were some of the precise areas of evidence that Mr. Archer raised in his motions as warranting severance, as well as warranting the disclosure of certain categories of evidence under Rule 16 and/or *Brady*.

Thank you for your consideration.

Respectfully,

/s/ Matthew L. Schwartz

Matthew L. Schwartz

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# **EXHIBIT A**



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

**BY MAIL**

January 25, 2018

Paula Notari  
315 Madison Avenue, Ste. 901  
New York, NY 10165

Gregory Morvillo  
Orrick LLP  
51 West 52<sup>nd</sup> Street  
New York, NY 10019-6142

Michael Tremonte  
Sher Tremonte LLP  
80 Broad Street, Suite 1301  
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Matthew Lane Schwartz  
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575 Lexington Avenue  
New York, NY 10022

David Touger  
Peluso & Touger, LLP  
70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have enclosed 1 DVD containing:

- Documents produced by Michelin (USAO\_SDNY\_012724 – USAO\_SDNY\_012832);
- Documents produced by Morgan Stanley (MS-USAO-0000001 – MS-USAO-0125257)

The password to decrypt the DVD is as follows: **USAO\_sdny2018!**

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by: /s/ Rebecca Mermelstein  
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
(212) 637-2360/2482/2190



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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**BY MAIL**

January 26, 2018

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Orrick LLP  
51 West 52<sup>nd</sup> Street  
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David Touger  
Peluso & Touger, LLP  
70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have enclosed 1 CD containing:

- Documents produced by Morgan Stanley (MS-USAO-0015258 – MS-USAO-0015375)

The password to decrypt the CD is as follows: **USAO\_sdny2018!**

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by: /s/ Rebecca Mermelstein  
Rebecca Mermelstein/Negar Tekcei/  
Brendan Quigley  
Assistant United States Attorneys  
(212) 637-2360/2482/2190



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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January 30, 2018

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315 Madison Avenue, Ste. 901  
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Orrick LLP  
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Michael Tremonte  
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575 Lexington Avenue  
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David Touger  
Peluso & Touger, LLP  
70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

In an abundance of caution, we enclose three draft FBI 302s and one U.S. Postal Inspection Service Memorandum of Interview. In addition, and in compliance with the Court's January 9, 2018 memo endorsement, we have reviewed any interview notes or testimony taken by the SEC in connection with its parallel investigation.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by: /s/ Rebecca Mermelstein  
Rebecca Mermelstein/Negar Tekeci/  
Brendan Quigley  
Assistant United States Attorneys  
(212) 637-2360/2482/2190





**U.S. Department of Justice**

*United States Attorney  
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**BY EMAIL AND FEDEX**

February 8, 2018

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Orrick LLP  
51 West 52<sup>nd</sup> Street  
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Peluso & Touger, LLP  
70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

Barry Levin  
1225 Franklin Avenue, Suite 325  
Garden City, 11530

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have enclosed 1 CD containing:

- Confidential Material in the form of e-mails obtained pursuant to a search warrant (16 Mag. 8347) for which the account holder has agreed no privilege applies. (SearchWarrant\_v2\_00031529 - SearchWarrant\_v2\_00031718)

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by:           /s/ Rebecca Mermelstein            
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
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## U.S. Department of Justice

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

February 8, 2018

BY FEDERAL EXPRESS

Matthew Lane Schwartz  
Boies, Schiller & Flexner LLP  
575 Lexington Avenue  
New York, NY 10022  
*Counsel for Devon Archer*

**Re: United States v. Jason Galanis, et al.,  
S1 16 Cr. 371 (RA)**

Dear Mr. Schwartz:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, enclosed please find a CD containing Confidential Material in the form of e-mails obtained pursuant to a search warrant (16 Mag. 8347) for email accounts belonging to Devon Archer, Bevan Cooney, and Sebastian Momtazi. These documents bear the following Bates ranges pr.review.archer\_00020954-21283 and pr.review.joint\_00000643-666 (the "Second Additional Reviewed Materials").<sup>1</sup> The Second Additional Reviewed Materials consist of 76 documents in addition to those produced on November 2, 2017, which have been reviewed by the Government's privilege team in this matter (the "Filter Team") and which the Filter Team has designated as potentially privileged and thus potentially subject to the crime-fraud exception to the attorney-client privilege. The password for the CD is SDny!022018.

In addition, as I have requested repeatedly via email, please clarify your position on the following documents. First, I could not find the documents beginning with the following bates ranges on either your lists of non-privileged documents or your Privilege Log: pr.review.archer\_00004898, pr.review.archer\_000006852, pr.reivew.archer\_000010046, and pr.review.archer\_18166. Please let me know your position on these documents. Second, there are three documents that appear on both your list of non-privileged documents and your Privilege Log: (a) pr.review.archer\_0002103 is on your NonPriv List (11.20.17 letter, page 7) and is also on your Privilege Log twice as pr.review.archer\_00002103 and

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<sup>1</sup> Documents with the Bates prefix pr.review.joint consist of emails that sent or received by both Archer (or Momtazi) and Cooney. These emails are also being provided to counsel for Cooney. Documents with the Bates prefix pr.review.archer consist of communications sent or received by Archer or Momtazi. These emails are not being provided to counsel for Cooney

Matthew Lane Schwartz, Esq.  
February 8, 2018

pr.review.joint\_00000014 (1.8.18 Log, pp. 1 and 21); and (b) pr.review.archer\_000003362-3556 is on your NonPriv List (11.20.17 Letter, page 10) and also on your Privilege Log as pr.review.joint\_00000022-23 letter (1.8.18 Log, p. 21); and (c) pr.review.joint\_00000492 is on your NonPriv List (11.22.17 letter, page 6) and is also on your Privilege Log twice as pr.review.archer 00004886. (1.8.18 Log, p. 2).

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

By: /s/ Lisa P. Korologos

Lisa P. Korologos  
Assistant United States Attorney  
Tel: (212) 637-2406

cc: Silvia Serpe, Esq. (via email, w/o attachments)  
*Counsel for Sebastian Momtazi*



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
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**BY EMAIL**

February 8, 2018

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New York, NY 10013

Barry Levin  
1225 Franklin Avenue, Suite 325  
Garden City, 11530

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case and your execution of the draft transcript stipulation, I have sent one email with the following documents attached:

- Draft transcripts created by the FBI (USAO\_SDNY\_012866 – USAO\_SDNY\_013008)

The materials are unencrypted.

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by: /s/ Rebecca Mermelstein  
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
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**BY EMAIL AND FEDEX**

February 9, 2018

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70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

Barry Levin  
1225 Franklin Avenue, Suite 325  
Garden City, 11530

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have enclosed 1 CD containing:

- Documents produced by Morgan Stanley (MS-USAO-0000445 through MS-USAO-0005754)<sup>1</sup>

The password to decrypt the disc is: **USAOsdny2018!**

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

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<sup>1</sup> Documents bearing the same bates numbers were produced to you January 25, 2018, but were missing certain image files. The enclosed production remedies that problem.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by: /s/ Rebecca Mermelstein  
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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**BY EMAIL**

February 12, 2018

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70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

Barry Levin  
1225 Franklin Avenue, Suite 325  
Garden City, NY 11530

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have attached one .zip file containing:

- Confidential Material in the form of a metadata overlay containing duplicate file paths and custodians for emails produced pursuant to a search warrant (16 Mag. 8347) for email accounts belonging to Devon Archer, Bevan Cooney, and Sebastian Momtazi.
- A spreadsheet of records the Government has obtained from the SEC and which we have produced in discovery (USAO\_SDNY\_013009 - USAO\_SDNY\_013016)

The materials are unencrypted.

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by: /s/ Rebecca Mermelstein  
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
(212) 637-2360/2482/2190



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
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New York, New York 10007*

**BY EMAIL**

February 15, 2018

Paula Notari  
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New York, NY 10165

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80 Broad Street, Suite 1301  
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Matthew Lane Schwartz  
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575 Lexington Avenue  
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David Touger  
Peluso & Touger, LLP  
70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

Barry Levin  
1225 Franklin Avenue, Suite 325  
Garden City, NY 11530

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have attached one .zip file containing:

- An updated spreadsheet of records the Government has obtained from the SEC and which we have produced in discovery (USAO\_SDNY\_013017-USAO\_SDNY\_013022); and
- Additional materials provided by City National Bank (USAO\_SDNY\_013023 - USAO\_SDNY\_013075)

The materials are unencrypted.

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by:           /s/ Rebecca Mermelstein            
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
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**BY FEDEX**

February 16, 2018

Paula Notari  
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70 Lafayette Street, 2<sup>nd</sup> Floor  
New York, NY 10013

Barry Levin  
100 Fairway Road  
Lido Beach, NY 11561

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have sent one disc containing Confidential Materials, including:

- Additional materials provided by Morgan Stanley (MS-USAO-0015376 – MS-USAO-0016882); and
- CRD Reports and other materials provided by FINRA (USAO\_SDNY\_013076 - USAO\_SDNY\_013328)

The password to access the disc is: USAOsdney2018!

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by:           /s/ Rebecca Mermelstein            
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
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**BY EMAIL**

February 20, 2018

Paula Notari  
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New York, NY 10013

Barry Levin  
100 Fairway Road  
Lido Beach, NY 11561

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have sent one email with the following attached:

- A document provided by Prudential (USAO\_SDNY\_013329-USAO\_SDNY\_013339)

The materials are unencrypted.

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by:           /s/ Rebecca Mermelstein            
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
Assistant United States Attorneys  
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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
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**BY EMAIL**

February 22, 2018

Paula Notari  
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New York, NY 10013

Barry Levin  
100 Fairway Road  
Lido Beach, NY 11561

**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have sent one email with the following attached:

- Investment Management Agreements and Guidelines for certain clients of Hughes Capital Management (USAO\_SDNY\_013340 - USAO\_SDNY\_013545)

The materials are unencrypted.

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

by:           /s/ Rebecca Mermelstein            
Rebecca Mermelstein/Negar Tekeei/  
Brendan Quigley  
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**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
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**BY EMAIL AND FEDEX**

February 27, 2018

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**Re: *United States v. Jason Galanis, et al.*, 16 Cr. 371 (RA)**

Dear Counsel:

This letter provides supplemental discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). Based on your request for discovery in this case, I have enclosed one DVD containing:

- Documents from JP Morgan Chase (SEC-JPMCB-E-0000001-JPMCB-E-0000564; SEC-JPMCB-P-0000002; SEC-JPMCB-P-0000004-SEC-JPMCB-P-0000123; and SEC-JPMC-P-0005008-SEC-JPMC-P-0005158)

Please see the transmittal email for the password to the DVD.

Nothing in this letter should be construed as a modification to the Government's requests for discovery from the defendant or any other information set forth in the Government's previous discovery letter. The Government recognizes that its obligation to provide discovery is of a continuing nature, and the Government will supplement this response if it obtains additional evidence and materials.

Very truly yours,

GEOFFREY S. BERMAN  
United States Attorney

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